

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LORI BROMSTAD-DETURK,)
) No. 431, 2008
Plaintiff Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in
v.) and for New Castle County
)
STATE FARM MUTUAL) C.A. No. 08C-02-118
AUTOMOBILE INSURANCE)
COMPANY,)
)
Defendant Below,)
Appellee.)

Submitted: April 8, 2009

Decided: June 2, 2009

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices, constituting the court *en banc*.

ORDER

This 2nd day of June 2009, it appears to the Court that:

(1) Lori Bromstad-Det Turk filed a complaint in the Superior Court against State Farm seeking to recover underinsured motorist benefits under three separate insurance policies. The trial judge granted State Farm's 12(b)(6) Motion to Dismiss. On appeal, Bromstad-Det Turk asserts that the trial judge incorrectly determined that 18 *Del. C.* § 3902(c) prohibits stacking multiple insurance policies. Because § 3902(c)'s unambiguous language precludes Bromstad-Det Turk from stacking her three insurance policies, we find no merit to her arguments and affirm.

(2) Bromstad-Deturk and her husband purchased three separate insurance policies from State Farm to cover the couple's three vehicles. Each policy contained an underinsured motorist coverage provision with a \$100,000 limit. On May 25, 2007, Bromstad-Deturk sustained injuries in a car accident when another driver crossed the centerline and struck her car. The driver of that other car tendered his \$15,000 insurance policy limit on December 26, 2007. In her complaint, filed on February 13, 2008, Bromstad-Deturk demanded that State Farm "stack all three separate insurance policies . . . into one recovery" for a total recovery of \$300,000. State Farm has paid Bromstad-Deturk \$100,000 under one of those policies, and the parties entered a stipulation acknowledging that the payment satisfies all claims arising under that policy. That stipulation, entered on April 17, 2008, also acknowledges that Bromstad-Deturk filed a declaratory judgment action in the Superior Court.

(3) In lieu of filing an answer to Bromstad-Deturk's complaint, State Farm filed a motion to dismiss. In its motion to dismiss, State Farm argued that Bromstad-Deturk's insurance policies contained an "anti-stacking" provision, authorized by § 3902(c). That policy language states:

If two or more vehicles owned or leased by *you, your spouse* or any *relative* are insured for this coverage under one or more policies issued by us or an affiliated company, the total limit of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability.

The trial judge agreed with State Farm and granted its motion to dismiss.¹ The trial judge determined that “the anti-stacking provisions in the insurance policies are permitted by the plain language of 18 *Del. C.* § 3902(c), and that therefore the terms of the insurance agreements preclude the Plaintiff from stacking her insurance policies.”² This appeal followed.

(4) Bromstad-Deturk raises one issue on appeal. She asserts a right to stack her three insurance policies and, as a result, recover \$300,000 from State Farm. We review *de novo* a trial judge’s interpretation of an insurance agreement and grant of a motion to dismiss.³ We also review *de novo* a trial judge’s statutory construction.⁴

(5) Bromstad-Deturk asserts that we should permit her to stack her insurance policies because the purpose of § 3902(c) is to “protect insured persons from the negligence of impecunious tortfeasors.” Bromstad-Deturk urges us not to read § 3902(c) narrowly, but requests that we construe that statute broadly to allow stacking in her situation. Bromstad-Deturk alleges “fundamental unfairness”

¹ *Bromstad-Deturk v. State Farm Mut. Auto. Ins. Co.*, 2008 WL 4147587 (Del. Super. Ct.).

² *Id.* at *1.

³ *AT&T Corp. v. Clarendon Am. Ins. Co.*, 931 A.2d 409, 415 (Del. 2007) (citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 444 (Del. 2005); *Phillips Home Builders, Inc. v. Travelers Ins. Co.*, 700 A.2d 127, 129 (Del. 1997)).

⁴ *Colonial Ins. Co. of Wis. v. Ayers*, 772 A.2d 177, 179 (Del. 2001) (citing *State Farm Mut. Auto. Ins. Co. v. Clarendon Nat. Ins. Co.*, 604 A.2d 384, 387 (Del. 1992)).

because § 3902(c) allows policyholders to stack three policies from three different insurers but precludes an insured from stacking three policies from the same insurer.

(6) We agree with the trial judge and affirm on the basis of his well reasoned opinion. Section 3902(c) clearly and unambiguously allows the type of anti-stacking provision found in Bromstad-Deturk's policies. We will not encroach upon the General Assembly's apparent intent to allow those with multiple policies from different, unaffiliated insurers to stack their uninsured motorist coverage, while allowing anti-stacking provisions that preclude stacking multiple policies issued by the same insurer.

(7) We suggest, however, that because consumers like Bromstad-Deturk may not fully comprehend the significance of an anti-stacking provision, the General Assembly might consider amending § 3902 to require insurers to notify consumers that they *would* be able to stack multiple policies from different, unaffiliated insurers. Adding a notice requirement to § 3902, would serve to encourage consumers to evaluate the pros and cons of choosing to ensure multiple vehicles through one insurer.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice